

DECISION OF THE
ARBITRATOR

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PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF:

Interest Arbitration

between the

Iowa State Education Association

-and-

Western Iowa Tech Community College

IOWA PERB CASE NO. CEO 634/1

REPRESENTATIVES:

For the Association: Bruce Lear, Uni-Serv Director

For the College: Jim Hanks, Attorney

DATE OF DECISION:

August 7, 2006

DATE OF HEARING:

July 25, 2006

ARBITRATOR'S AUTHORITY:

By letter dated June 22, 2006, the Iowa Employment Relations Board (PERB) notified Peter E. Obermeyer of his selection as the Arbitrator to hear and decide PERB Case No. CEO 634/1. The parties to the dispute were identified as the Western Iowa Tech Community College (College) and the Iowa State Education Association, Western Iowa Tech Community College Education Association (Association).

On Tuesday, July 25, 2006, beginning at 9:00 a.m., a hearing was held at the College's Administrative Offices in Sioux City, Iowa. At the hearing both parties were provided the opportunity to present exhibits and testimony which were relevant to the impasse items in dispute.

Based on the record developed at the hearing of July 25, 2006, the Arbitrator was obligated to select one party's final position on each issue at impasse. Iowa Code establishes the following criteria, along with other relevant factors, as the basis for selecting the College's or the Association's position on each impasse item in dispute as the "most reasonable":

1. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
2. Comparison of wages, hours and conditions of employment of the involved public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
3. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
4. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

The decision in this case was based on the record and the criteria of Iowa Code.¹

The representatives of the College and the Association agreed that an Arbitrator's

¹Iowa Code, Section 20.22(9).

decision, postmarked no later than Wednesday, August 9, 2006, would be recognized as timely by the parties.

IMPASSE ITEMS:

The parties have had a generally constructive labor-management relationship since the Association became the exclusive representative of the faculty in 1976. Although the parties used the fact-finding and arbitration processes in the early years of their negotiations, the last reliance on an issued fact-finding or arbitration decision was for the 1986-87 contract.

Negotiations for a 2006-2007 contract did not result in a voluntary settlement. Direct negotiations and mediation produced several tentative agreements, but could not resolve the issues of salary schedule increase, health insurance contributions, and "break time". The dispute is now before the Arbitrator for final resolution.

At the July 25, 2006 hearing the parties identified the following impasse items to be in dispute:

1. Salary (Article 15: Salary, H).
2. Health Insurance (Article 6: Insurance, A).
3. Hours of Work (Article 14: Hours, A).

The representatives of the parties, at the hearing, stipulated that the above three impasse items were properly before the Arbitrator. Written documents were exchanged by the parties waiving the statutory time line for completing the 2006-2007 negotiations for a Master Contract.²

INTRODUCTION:

1. Background. The College is located in Sioux City serving students in Buena Vista, Carroll, Cherokee, Crawford, Harrison, Ida, Monona, Plymouth, Sac, Shelby, Sioux, and

²Association Exhibit Nos. 1 and 2.

Woodbury Counties. During the Fiscal Year 2005 Fall semester the College had an enrollment of approximately 5,300 students. The Association bargaining unit is composed of 91 full-time and part-time faculty members. The College has one other collective bargaining relationship with UE, Local 893 and a "met and confer" relationship with employees not represented by an exclusive representative.

2. Comparability Group. The parties are in general agreement that the most reliable comparison group is composed of the fifteen institutions which make-up the Iowa Community College system. In some comparisons the Association does not include 2 colleges (North Iowa Area and Indian Hills), because the faculty is not represented for collective bargaining. Similarly, the College was unable to provide data for certain comparisons because of the failure of Iowa Western to respond to their written survey request. The comparison group used in this decision was all fifteen community colleges in the Iowa Community College system.

3. Nature of the Arbitration Process. Under the provisions of Iowa Code³ the Arbitrator's decision is restricted to the "final offer" of the employer or the employee organization on each impasse item. Such limitation is always troubling to arbitrators, who too often prefer to substitute their judgement for that of the parties. As true with other final offer interest arbitration cases, the Arbitrator here would have created a decision which would have varied from both parties "final offers".

4. Arbitrator Biases. The Arbitrator has two biases concerning collective bargaining which influenced the decision in this case. First, changes made to an existing contract are best left to the parties. It is through the negotiations process that the parties craft an agreement that suits their needs. Arbitrator's decisions should generally encourage the parties to reach future negotiated settlements. And second, adding a term or condition of employment to an existing contract or removing an existing term or condition from an existing contract are justifiable only in unique circumstances. Absent abuse; inconsistency with written policy, rule, or law; or major

³Iowa Code, Chapter 20.22(3).

variance from the comparability group, the Arbitrator is reluctant to add to or remove existing terms from a contract.

ISSUES:

1. Hours of Work (Article 14: Hours, A). The current Contract between the parties establishes a work week of "... thirty-seven and one-half (37 ½) hours of work assignments....," including a one-half (½) hour duty free lunch break per day.⁴ The Association seeks to include in the Contract 102 minutes of "break time" each day, during which a teacher could not be "assigned" by the College.

Although, six of the 15 colleges in the comparability group have some form of "break time" contained in their contracts, this does not demonstrate a preponderance sufficient to direct its addition to the parties' Contract.⁵ The issue of "break time" and its impact on the work day and work week is better left to the College and Association to bargain as part of a total package.

2. Health Insurance (Article 6: Insurance, A) The College and the Association were both candid in their positions that the amount of the employer's health insurance contribution was the crucial impasse item. It was the position of the Association that the parties have bargained, over several contracts, increases in the cost of insurance to the faculty. They concluded, that the current 75% - 25% contribution for family insurance coverage between the College and employee should remain unchanged. The College argued that continued health care cost increases is a mutual concern and responsibility of the College and the employees and must continue to be shared. This sharing of increased health insurance premiums would be accomplished by increasing the family coverage contribution from 25% to 30% for employees and reducing the College participation from 75% to 70%.

- Association Position. The Association argues that the current health insurance contribution formula for family coverage (75% College and 25% employee) should not

⁴Association Exhibit No. 12, p. 17.

⁵Association Exhibit No. 38.

be modified. Four primary contentions were put forward by the Association supporting their position:

1. When judged against the comparability group the College dollar contribution towards health insurance is average, varying in rank slightly up or down based on single, dependent, or total contribution and benefit calculations;⁶
2. Historically the 75% - 25% family contribution split has been unchanged by the parties since the 1988-89 contract year;⁷
3. Changes in the shift of insurance cost has historically been a bargained change by the parties, not a change directed by an arbitrator;⁸ and
4. Traditionally Iowa arbitrators have been most reluctant to make changes in existing health insurance terms and conditions;⁹

The Association stressed that historically changes to health insurance cost, whatever the form it takes, has been negotiated by the parties, not gained through arbitration. Shifts of costs to employees has been part of a total package which included "... a premium settlement package..."¹⁰ In this case the College's final offer does not have such a "sweetener" to warrant change in the existing contribution formula.

- **College Position.** The College contends that the continued rapid increase in health insurance premiums requires an increase in employee contributions toward family

⁶Association Exhibits Nos. 43 and 44.

⁷Association Exhibit No. 48.

⁸Association Exhibit No. 52.

⁹Association Exhibit Nos. 61, 62, and 63.

¹⁰Association Exhibit No. 21 A, p.2.

coverage.¹¹ This would be accomplished by changing the contribution split between College and employee from 75%/25% to 70%/30%. The College supported its position by arguing:

1. The 1985 Fact-Finders decision led to the establishment of the 75%/25% split (an increase in the College's contribution from a 50%/50% split) for family insurance, therefore the college's burden to justify a reduction in this case is less stringent;¹²
2. Bargaining history demonstrates that the College has continuously sought to share the increased cost of insurance between the parties;¹³
3. Annual family health insurance contributions by the College rank 5th among the comparability group;¹⁴
4. An internal comparison demonstrates that "meet and confer" group employees (comprising 45% of the work force) have a higher level of employee contributions;¹⁵
5. Iowa's fact-finders and arbitrators, during the last five year period, have in over 50% of the decisions issued involving health insurance, shifted costs to employees;¹⁶ and

¹¹College Exhibit No. E-1.

¹²College Exhibit No. E-13, items 1, 2, 3, and 4.

¹³College Exhibit Nos. C-7 and E-4.

¹⁴College Exhibit No. E-3.

¹⁵College Exhibit No. E-5.

¹⁶College Exhibit No. E-12.

6. The College's final position regarding the salary schedule increase exceeds that of the Association and the comparability group average salary settlement, thus in affect paying for the cost of the family health insurance increase for employees.¹⁷

The College urged the Arbitrator to conclude that a shift in health care costs to employees is the continuation of a trend in Iowa that has been supported by fact-finders and arbitrators, as well negotiated by labor and management. Given the total environment of the family health insurance contribution issue the shift to a 70%/30% split is not excessive, and "...the College is proposing to pay for that small impact."¹⁸

3. Salary (Article 15: Salary, H). The salary issue is in direct tandem with health insurance contributions. In this case we have the unique situation where the employer is submitting a salary final position (5.65%) which exceeds the employee organization final of 5.10%.¹⁹ The College's final offer in it's contribution toward family health insurance, however would be approximately \$20,000 less than the current level of College contribution.²⁰ The Arbitrator's Decision on health insurance directly ties to the salary-health insurance tandem issue.

- Association Position. In support of their final position on the salary issue the Association identified the following factors as supporting their stand:

1. Faculty salaries and faculty salaries and benefits have historically ranked in the bottom one-half of the comparability group of Iowa Community Colleges;²¹

¹⁷College Exhibit Nos. H-1, 2, and 3.

¹⁸College Exhibit No. E-13, item 4.

¹⁹Association Exhibit No. 14 and College Exhibit No. H-1.

²⁰Association Exhibits Nos. 18 and 19.

²¹Association Exhibits Nos. 65, 66, 67, 68, and 69.

2. Ability to pay is not an issue in this case, particularly given the significant "turn over" savings expected in Fiscal Year 2007;²² and

3. Historically the parties have "voluntarily bargained less in salary in order to maintain a high benefit level."²³

● College Position. The College argues that it's position regarding the salary increase ties together in a total economic package, which off-sets the relatively small shift of health insurance cost to employees who select family coverage. Accordingly, it's salary position merits favorable consideration because:

1. Family health insurance cost for the College is in excess of the average for the comparability group, which results in a below mean average salary within the comparability group;²⁴

2. The final salary position (5.65%) of the College is above the average salary settlements (4.82%) of the comparability group;²⁵ and

3. Changes in the Fall headcount of students and the tuition per credit hour cost are possible concerns that may impact the outcome of future bargaining.²⁶

²²Association Exhibit No. 70.

²³Association Exhibit No. 75 and College Exhibit No. H-3.

²⁴College Exhibit No. F-2.

²⁵College Exhibit No. H-2.

²⁶College Exhibit Nos. H-4, 5, and 7.

DISCUSSION:

In reaching a conclusion in this dispute the Arbitrator considered eight factors.

1. Costing. The parties reached similar outcomes in costing the College and Association final positions. Both parties agreed that the College final offer was a salary increase of 5.65% and a total package increase of 5.15% and the Association final position was 5.10% salary and a 5.11% total package.²⁷ Estimated dollar increases for the salary and total package were nearly identical.²⁸

2. History of Collective Bargaining. Since the Fact-Finding decisions of 1984-85 and 1985-86 the parties have reached negotiated settlements, with out resorting to the impasse procedures of the Public Employment Relations Act.²⁹ The bargaining between the parties has covered a variety of subjects, including the shift of health care costs to employees. The history of the parties negotiations demonstrates their ability to deal with the cost of health care at the bargaining table, rather than relying on the statutory impasse procedures. The Arbitrator concludes, that given the facts of this case, the health care cost issue should remain with the parties to bargain rather than to direct a change.

3. Tandem Relationship. In this case the salary increase and the health insurance contribution formula are directly linked. Selection of one party's health insurance final position must link it to that party's salary position.

4. Comparability Group. The Arbitrator concludes that the most useful comparability group is the fifteen colleges in the Iowa Community College system. When judged against the

²⁷College Exhibit No. H-1 and Association Exhibit No. 14.

²⁸College Exhibit No. H-1 and Association Exhibit Nos. 18 and 19.

²⁹College Exhibit No. C-1.

comparability group the parties have bargained settlements which direct dollars to benefits at the expense of the salary schedule. When ranked against other colleges, WIT tends to rank higher in higher annual benefit costs and lower in salary.³⁰ The Association's position would maintain this relationship between benefits and salary.

In addition, an internal comparison of health insurance costs is appropriate. Three distinct employee groups are identifiable within the College. Faculty members represented by the Association, support personnel represented by the UE, and all employees not represented by an employee organization in a "meet and confer" group. The College has recently made cost shifts to employees in the "meet and confer" group, however the UE and Association have employer family insurance contributions which are similar. Although appropriate to consider, the Arbitrator would have given much greater weight to the internal comparison if the UE had a contribution formula similar to that of the "meet and confer" group.

With the expiration of both the UE and the Association agreements next year all parties should be prepared for intense bargaining concerning health care costs.

5. Arbitrator's Perspective. As discussed earlier the Arbitrator is reluctant to modify the existing Contract terms, such as the formula for health insurance contributions, where the parties have a history of negotiating such modifications. This is particularly true, absent any compelling evidence from the comparability group. This resulted in a reluctance to find in favor of the College's position on health insurance.

Similarly, the Arbitrator believes that new terms and conditions should not be added to the Contract by means of impasse procedures. The Association's proposal for the inclusion of "break time" in the Contract is better suited to negotiations between the parties.

6. Statutory Standards. Two statutory standards were important in reaching this Decision. First, was past collective bargaining contracts (history of bargaining). And second, the comparison of hours, wages, and conditions of employment among like employees (comparability group). The interests and welfare of the public and the financial ability of the College to pay,

³⁰College Exhibit No. E-3 and Association Exhibit Nos. 65, 66, 67 and 68.

were not generally applicable or at issue in reaching the Decision.

7. Conclusion. The history of bargaining between the parties, particularly concerning health care costs, and the stability of the relative standing of salary and benefits within the comparability group, were persuasive in finding for the Association on the Salary and Health Insurance impasse items. Adding "break time" to the Contract is better suited for collective bargaining, therefore the Hours of Work impasse item is found in favor of the College.

DECISION:

1. Salary (Article 15: Salary, H).

Association's Position:

H. Salary for 2006-2007

1. Effective July 1, 2006, each full-time employee shall receive 5.10% added to his/her contracted salary.
2. Effective July 1, 2004, the Hiring Guide shall be increased by 2.55%.³¹
3. Unless the parties agree to a different adjustment, the hiring guide shall be adjusted in future years by the same percentage as continuing employees have added to their salaries.
4. If the Legislature appropriates money which is required to be expended for faculty salaries, said money will be distributed to bargaining unit employees on a percentage basis (Employee's Salary divided by Total Bargaining Unit Salaries = Employee's Percentage of Appropriated Money). The appropriated salary money will not be added to the employee's base salary, unless the

³¹Note this is a direct quote from both parties statement of the Association's position on the Hiring Guide increase, making it effective July 1, 2004. I would conclude that this is an error and the effective date should be July 1, 2006.

Legislation contains such a requirement.

2. Health Insurance (Article 6: Insurance, A).

Association's Position:


No change in current Article 6: Insurance, A.

3. Hours of Work (Article 14: Hours, A).

College's Position:

No change in current Article 14: Hours, A.

Signed this 7th day of August 2006.


Peter E. Obermeyer, Arbitrator

CERTIFICATE OF SERVICE:

I certify that on the 7 of August, 2006, the Arbitrator served this decision on the representatives of the parties by mailing a signed and dated copy to each of them at the following addresses:

Bruce Lear
Iowa State Education Association
1119 Fourth Street, Suite 213
Sioux City, Iowa 51101

James Hanks
Western Iowa Tech
100 Court Avenue, Suite 600
Des Moines, Iowa 50309

This Decision was also mailed to the Iowa Public Employment Relations Board on the 7 day of August, 2006.


Peter E. Obermeyer